

## Internal Revenue Service

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May 28, 2009

### LEGEND

Agency =

Corporation =

County =

State =

State Law 1 =

State Law 2 =

State Law 3 =

Dear

This responds to your request for a ruling that bonds issued by the Corporation will be treated as issued on behalf of the County for purposes of § 103 of the Internal Revenue Code (the "Code").

### FACTS AND REPRESENTATIONS

The County is a political subdivision of the State governed by an elected board of representatives (the "County's Board"). Agency is a public benefit corporation of the

State created pursuant to State Law 1. Agency is governed by members who are appointed by and serve, without compensation, at the pleasure of the County's Board.

Pursuant to State Law 2, the County caused the Corporation to be formed as a public instrumentality of the County and approved its certificate of incorporation. The Corporation is a not-for-profit local development corporation organized under State Law 2 to assist the County with carrying out the public purposes of relieving and reducing unemployment; promoting and providing for additional and maximum employment; bettering and maintaining job opportunities; instructing or training individuals to improve or develop their capabilities for such jobs; carrying on scientific research for the purpose of aiding the County by attracting new industry to the County, by encouraging the development of, or retention of, an industry in the County, and by lessening the burdens of government; and acting in the public interest.

Under State Law 2, in furtherance of its purposes, Corporation is empowered to construct, acquire, rehabilitate and improve for use by others industrial or manufacturing plants in the County, to assist financially in such construction, acquisition, rehabilitation and improvement, to maintain such plants for others in such territory, to disseminate information and furnish advice, technical assistance and liaison with Federal, State and local authorities with respect thereto, and to acquire by purchase, lease, gift, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefore, to sell, lease, mortgage or otherwise dispose of or encumber any such plants or any of its real or personal property or any interest therein upon such terms as it may determine. State Law 2 further provides that in carrying out such powers the Corporation will be performing an essential government function.

The County is the sole member of the Corporation. The County's Board appoints the Corporation's governing board of directors (the "Corporation's Board") from members of the Agency. The Corporation's Board serves, without compensation, at the pleasure of the County's Board. The Corporation is required to undergo annual independent audits and to submit those audits to the County and to the State, to prepare and submit its annual budget to the County and to the State, and to form governance and audit committees to ensure the Corporation is in compliance with State laws. The Corporation may not amend its by-laws or certificate of incorporation without the consent of the chairman of the County's Board. No part of the Corporation's net earnings will inure to the benefit of any private person. Upon dissolution, title to all property owned by the Corporation will vest in and become the property of the County.

Bonds issued by the Corporation will not be backed by the full faith and credit of the County, and thus will be non-recourse to the County. Bonds issued by the Corporation will be secured solely by the creditworthiness of a particular project. The County's Board will provide the public approval under § 147 for private activity bonds issued by

the Corporation that are intended to be tax-exempt for Federal income tax purposes under § 103 of the Code.

Pursuant to State Law 2 the income and operations of the Corporation are exempt from State taxation. Pursuant to State Law 3 interest on bonds that are tax-exempt for Federal income tax purposes is exempt from State income tax.

## LAW AND ANALYSIS

Section 103(a) of the Code provides, in general, that gross income does not include interest on any state or local bond. Section 103(c)(1) defines a “state or local bond” for purposes of §§ 103, and 141 through 150, as an obligation of a state or political subdivision thereof. Section 1.103-1(a) of the Income Tax Regulations provides, in part, that interest upon obligations of a state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof (hereinafter collectively or individually called “state or local government unit”) is not includable in gross income. Section 1.103-1(b) provides, in part, that an obligation issued by or on behalf of any state or local governmental unit by a constituted authority empowered to issue such an obligation is the obligation of such a unit.

Revenue Ruling 57-187, 1957-1 C.B. 65, holds that bonds issued by an industrial development board (the “entity”) are considered issued on behalf of a political subdivision of the state under the following facts and circumstances: the entity is formed only after the governing body of the political subdivision has formally approved the entity's creation; the board of directors of the entity is elected by the governing body of the political subdivision and serves without compensation; the entity is empowered to issue bonds in furtherance of the purposes for which it is established; bonds issued by the entity are payable solely out of revenues and receipts derived from the leasing or sale by the entity of its projects; the political subdivision is not liable for the payment of principal or interest on any of the bonds of the entity; the entity is exempt from all state taxation, and interest on bonds issued by the entity is exempt from state taxes; the entity is a nonprofit organization and none of its net earnings inure to the benefit of any private person; and upon dissolution of the entity, title to all property it owns vests in and becomes the property of the political subdivision which creates it. Although this revenue ruling deals with an industrial development board, the analysis contained therein has been applied to a variety of governmental entities.

Comparing the facts of Rev. Rul. 57-187 to the facts as presented, we conclude that the Corporation qualifies as an “on behalf of” issuer of the County for purposes of § 1.103-1(b). The Corporation was formed as a public instrumentality of the County only after the County's Board formally approved its incorporation. The Corporation's Board is appointed by and serves at the pleasure of the County's Board. The Corporation is

empowered to issue bonds in furtherance of its purposes. Bonds issued by the Corporation will be nonrecourse to the County. The income and operations of the Corporation are exempt from State taxation under State Law 2. Pursuant to State Law 3, interest on federally tax-exempt bonds issued by the Corporation will be exempt from State income tax. The Corporation is a nonprofit corporation and no part of its net earnings will inure to the benefit of any private person. Upon dissolution of the Corporation, title to all property owned by it will vest in and become the property of the County.

## CONCLUSION

Based on the foregoing, we conclude that bonds issued by the Corporation will be treated as issued on behalf of the County for purposes of § 103 of the Code.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your representative.

Sincerely,

Associate Chief Counsel  
(Financial Institutions and Products)

By: \_\_\_\_\_  
Carla A. Young  
Assistant to the Branch Chief  
Branch 5